

January 22, 2019

Nora Slawik, Chair  
Lisa Barajas, Planning Assistance Manager  
Metropolitan Council  
360 Robert St. N.  
St. Paul, MN 55101

Re: Objections to Minneapolis draft Comprehensive Plan  
By email and U.S. Mail



**Housing Justice Center**  
Public Interest Legal Advocates  
Jack Cann, Senior Attorney

Dear Ms Slawik and Ms Barajas:

Minneapolis' 2040 Comprehensive Plan draft fails to meet important requirements of the Metropolitan Council statute and the Council's 2040 Housing Policy and Planning Handbook. The draft Plan fails to meaningfully address the largest and most serious housing need in the city and in the metro area – the desperate need for affordable housing for extremely low income households, with incomes at or below 30% of Area Median Income (AMI). Pursuant to Minnesota Statutes § 473.175 Subd. 1, the Council has a duty to review and comment on the consistency of the Minneapolis draft Comprehensive Plan with Council policy set out in Choice, Place, and Opportunity; Thrive MSP 204; and the 2040 Housing Policy Plan and Planning Handbook. We expect the Council to fulfill this statutory requirement. The failure of the Plan to address this issue also has obvious fair housing implications, described below, and we expect the Council, in reviewing and commenting on the City's draft plan, to fulfill its duty to affirmatively further fair housing and to live up to its recent commitments to regional equity.

**The need for housing for Extremely Low Income households is huge and unaddressed.**

The need for housing for extremely low income households is the city's largest and most serious housing need. Recent HUD data estimates 22,895 extremely low income households in the city paying more than half of their income for housing.<sup>1</sup> These extremely low income households make up 77% of all city households with this level of cost burden.<sup>2</sup> In addition to these existing cost burdens, the Metropolitan Council estimates that in order to address the housing needs of new city households over the coming decade, Minneapolis will have to produce 1,551 new units affordable at 30% of AMI or less – 15% of all new units to be produced in the coming decade.

The desperate situation of extremely low income households represents a serious fair housing issue. Minority households in Minneapolis are 3.46 times as likely as white, non-Hispanic households to be extremely low income renters with serious housing problems.<sup>3</sup>

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<sup>1</sup> HUD CHAS data 2011-2015, available at: [https://www.huduser.gov/portal/datasets/cp.html#2006-2015\\_data](https://www.huduser.gov/portal/datasets/cp.html#2006-2015_data).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*, Data Download page; Table 2, households with serious housing problems by income and race. Analysis of this data shows 8,350 of 116,140 (7.2%) of white non-Hispanic households as extremely low income renters with serious housing problems compared to 12,530 of 50,395 (24.9%) of minority households in this situation. Serious housing problems include payment of more than 50% of income for housing, serious over-crowding, or lacking facilities; virtually all are seriously cost burdened.

Policies which limit affordable housing opportunities for these households have a disparate adverse impact on minority households and thus constitute a prima facie violation of the federal Fair Housing Act.

It is critical to understand that providing affordable housing for extremely low income households requires provision of operating or rental subsidies. The vast majority of new affordable housing produced in the metro area is for households with incomes greater than 30% of AMI – typically up to 50% or 60% of AMI. It is produced with public assistance aimed at reducing the capital costs of producing the housing and therefore at reducing the amount of amortizing mortgage debt required. It is unaffordable to extremely low income households because they cannot afford to pay the monthly operating costs of rental housing. Occasionally project based vouchers are provided with this housing, but these projects do not increase the supply of deeply affordable housing, they simply convert existing tenant-based vouchers to project based vouchers.

The need for affordable housing for extremely low income households, for whom very little new housing is produced, vastly exceeds the need for households at 50% or 60% of AMI, who are the targets of most new affordable housing production. In contrast to the 22,895 extremely low income households paying more than half their income for housing, only 4,930 households with incomes higher than 30% but up to 50% of AMI are in that situation.<sup>4</sup> In contrast to 1,551 new units affordable at or below 30% of AMI needed in Minneapolis in the next decade, only 494 new units are needed for households with incomes higher than 30% of AMI up to 50% of AMI.<sup>5</sup>

### **Comprehensive Plan Requirements**

Under the Metropolitan Land Planning Act (the Act), Min. Stat. §§473.841-473.869, and the Metropolitan Council's 2040 Housing Policy Plan, the housing elements of comprehensive plans must include the following elements, which are missing from the Minneapolis Plan with respect to the city's most serious housing issues:

1. Standards, plans, programs, fiscal devices, and other specific actions, to be undertaken in stated sequence, which "will" meet existing local and regional housing needs. Minn. Stat. § 473.859 Subd. 4; 2040 Housing Policy at 109, 113.
2. Acknowledgement of the community's share of the region's need for low and moderate income housing. 2040 Housing Policy at 109.
3. A description of the tools the City will employ to address housing needs and the sequence for their implementation. 2040 Housing Policy at 113.

The Council's Planning Handbook adds the following requirements:

1. A narrative analysis of existing housing needs clearly identifying existing needs and priorities. This analysis is to address potential barriers to meeting those needs.
2. A clear and direct linkage between needs identified and tools to be employed, focusing on different levels of affordability. Plans consistent with Council policy will consider all widely accepted tools to address their housing needs.

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<sup>4</sup> HUD CHAS data 2011-2015, available at: [https://www.huduser.gov/portal/datasets/cp.html#2006-2015\\_data](https://www.huduser.gov/portal/datasets/cp.html#2006-2015_data).

<sup>5</sup> Metropolitan Council System Statement for Minneapolis, <https://metrocouncil.org/Communities/Planning/Local-Planning-Assistance/System-Statements.aspx>, pg. 4.



### **The Minneapolis Comprehensive Plan draft fails to meet these standards.**

The Minneapolis Comprehensive Plan draft is wholly lacking in any acknowledgement of the critical barrier involved in producing housing affordable to extremely low income households: the necessity of providing ongoing operating subsidies, which is unique to this income group. Lacking any acknowledgement of this barrier, the set of affordable housing tools included in the draft Plan wholly fails to provide any standards, plans, programs, fiscal devices, or specific actions which could actually produce housing affordable to extremely low income households, let alone any clear and direct linkage between the Metropolitan Council's estimate of need for 1,551 new units affordable in the next decade for extremely low income households and the tools identified. The plan identified no tools to address the need for operating subsidies for these new extremely affordable units.<sup>6</sup>

Beyond these obvious failures, there is ample evidence of how little care, thought, or attention was paid to this important issue by the City. First, the initial draft Policy 33 included as an "action step": "Prioritize the needs of those who have the greatest need for housing stability – households with incomes at or below 30 percent of area median income." This was a far cry from the specific action steps required by the statute but it at least recognized as a priority the city's most pressing affordable housing problem. But the current Policy 33 draft has eliminated that language in favor of "prioritizing funding to households earning at or below 30% and 50% of area median income." As noted above, nearly five times more extremely low income households in the city are severely cost burdened than those in the 50% of AMI group. Given that virtually all current production efforts are directed toward the 50% of AMI group, the policy change represents a significant retreat from the initial draft of the Plan.

Second, the initial draft of the Plan contained no reference to the Metropolitan Council's allocation of affordable housing need to the City. Then, in spite of the problem being repeatedly called to its attention, City staff responsible for the current draft of the Plan again failed to comply with the requirement that the plan acknowledge the City's share of the region's affordable housing need. Only in Appendix C to the draft Plan are the need figures provided by income band and there is a very substantial mistake in those figures. The Council's need assignment is 1,551 units at or below 30% AMI and 494 at above 30% to 50% AMI. The draft Plan has the figures as 1,551 and 1,494 respectively – implying that the need at 50% of AMI is essentially equal to that at and below 30% of AMI, even though it is actually far less. This continued error by itself renders the Plan substantially inconsistent with Metropolitan Council policies and requirements.

### **Fair Housing and Equity implications**

As set out above, minority households are far more likely than white non-Hispanic households to be extremely low income renters with serious housing problems. The failure by the city to plan for the housing desperately needed by this group therefore has

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<sup>6</sup> At least one Minneapolis Councilmember has cited the Mayor's new Stable Homes, Stable Schools policy as responsive to this need. The policy would use some local funds to assist in the provision of tenant-based rental subsidies for three years. This policy, however, has nothing to do with the development of new housing units affordable to extremely low income households and thus will play no role in addressing the 1,551 unit need over the next decade.

an obvious disparate adverse impact on minority households. It also violates the City's duty, as a recipient of federal community development funds, to affirmatively further fair housing. For the Metropolitan Council to fail to aggressively pursue what steps are available to it to correct this situation would make the Council complicit in these violations and in the Council's own affirmative fair housing obligations.<sup>7</sup> As a major recipient of federal housing funds, the Council's duty to affirmatively further fair housing extends to all of its activities and programs relating to housing and urban development.<sup>8</sup> This duty includes "taking meaningful actions that...address significant disparities in housing needs."<sup>9</sup>

Further, The Metropolitan Council "has identified equity as one of the five key regional outcomes from Thrive MSP 2040."<sup>10</sup> Thrive MSP 2040 defines equity:

*Equity connects all residents to opportunity and creates viable housing and transportation options for people of all races, ethnicities, incomes, and abilities so that all communities share the opportunities and challenges of growth and change. For our region to reach its full economic potential, all of our residents must be able to access opportunity. Our region is stronger when all people live in communities that provide them access to opportunities for success, prosperity and quality of life.<sup>11</sup>*

Unless the Council is prepared to effectively address the housing problems of extremely low income, disproportionately minority households, its commitment to regional equity will prove to be extremely hollow.

Yours truly,



Jack Cann,  
HJC attorney

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<sup>7</sup> The Metropolitan Council is still the Respondent in a major Fair Housing Act Complaint filed in 2014 regarding its failure to use its authority over comprehensive plans to affirmatively further fair housing.

<sup>8</sup> 24 C.F.R. § 5.152.

<sup>9</sup> *Id.*

<sup>10</sup> See, Metropolitan Council's Choice, Place, and Opportunity, at 8-1.

<sup>11</sup> Thrive MSP 2040, pg. 38.